

REMARKS

Applicant appreciates the time taken by the Examiner to review Applicant's present application. This application has been carefully reviewed in light of the non-final Official Action mailed July 21, 2009. Applicant respectfully requests reconsideration and favorable action in this case.

Claims status

Claims 23-27 and 31-45 were pending. Claims 23, 26-27, 31-33, and 36-45 were rejected. Claims 24-25 and 34-35 have been allowed. To explicitly place the present application in condition for allowance, claims 23-27 and 31-45 are amended herein as follows:

- Allowable claims 24, 25, 34, and 35 have been rewritten in independent form, including all of the limitations of their respective base claim and any intervening claims.
- Claims 26, 27, and 31 are amended herein to depend from allowable claim 24.
- Claims 36, 37, and 38 are amended herein to depend from allowable claim 34.
- Claim 40 is amended herein to incorporate allowable subject matter of claim 25 and include claim language similar to allowable claim 25.
- Claim 42 is amended herein to incorporate allowable subject matter of claim 24 and include claim language similar to allowable claim 24.
- Claims 31, 38, 40, 44, and 45 are amended here to be more consistent with the language used in the specification, particularly at page 14, lines 26-30.
- Claims 32-33, 39, 41, and 43 are cancelled herein without prejudice or disclaimer.

Claims 54, 55, and 56 are newly added to depend from allowable claim 25. Claims 54, 55, and 56 contain language similar to claims 26, 27, and 31, which depend from allowable claim 24. No new matter is added.

Claims 1-23, 28-30, and 46-53 were canceled previously. By this Amendment, claims 24-27, 31, 34-38, 40, 42, 44-45, and 54-56 are pending. Applicant respectfully submits that the present application is now in condition for allowance, a notice of which is earnestly requested.

Rejections under 35 U.S.C. § 112, first paragraph

Claims 31-32 and 38-45 were rejected under 35 U.S.C. §112, first paragraph. Claims 32, 39, 41, and 43 are cancelled herein, rendering the rejections with regard to these claims moot. Claims 31, 38, 40, 42, and 44-45 are amended herein. Support for the amendments to claims 31, 38, 40, 42, and 44-45 can be found in the specification as originally filed. For example, page 14, lines 26-30, of the specification discloses:

“After injection of bone cement 160 in region 162, bone tap 100 may be left in the bone for a chosen amount of time to allow the bone cement to begin to cure. In some embodiments, additional bone cement may be injected after bone tap 100 is partially withdrawn from the bone. Withdrawing the bone tap 100 and injecting additional cement one or more times may allow more complete filling of region 162 with bone cement 160.”

Thus, in some embodiments, a fluid can be introduced to a bone through an opening in the bone that is formed by a bone tap. The bone tap may be left in the bone for a chosen amount of time and then partially withdrawn from the bone. Because the bone tap is partially withdrawn, additional fluid may be introduced to the bone at a location that is different from the location where the fluid was last introduced. As described at least in the above-referenced portion of the specification, this can be done one or more times to allow more complete filling of the region under treatment. Claims 31, 38, 40, 42, and 44-45 are amended herein to be more consistent with the language used in the specification. Applicant believes the amendments to claims 31, 38, 40, 42, and 44-45 sufficiently overcome the 35 U.S.C. § 112, first paragraph, rejections set forth in the non-final Office Action mailed July 21, 2009. Withdrawal of these rejections is therefore respectfully requested.

Rejections under 35 U.S.C. § 102

Claims 23 and 33 were rejected under 35 U.S.C. §102(b) as being anticipated by EP 0557899 A1 (“Vrespa”). Claims 23 and 33 are canceled herein, rendering the rejections with regard to these claims moot. Withdrawal of these rejections is therefore respectfully requested.

Rejections under 35 U.S.C. § 103

Claims 26 and 36 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Vrespa in view of U.S. Patent No. 4,653,338 ("Yeomans"). As amended, claims 26 and 36 depend from allowable claims 24 and 34. Accordingly, claims 26 and 36 are believed to be patentable under 35 U.S.C. § 103(a) over Vrespa combined with Yeomans. Withdrawal of these rejections is therefore respectfully requested.

Claims 27 and 37 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Vrespa in view of U.S. Patent No. 6,622,731 ("Daniel"). As amended, claims 27 and 37 depend from allowable claims 24 and 34. Accordingly, claims 27 and 37 are believed to be patentable under 35 U.S.C. § 103(a) over Vrespa combined with Daniel. Withdrawal of these rejections is therefore respectfully requested.


Conclusion

Applicant has now made an earnest attempt to place this case in condition for allowance. Other than as explicitly set forth above, this reply does not include any acquiescence to statements, assertions, assumptions, conclusions, or any combination thereof in the Office Action. For the foregoing reasons and for other reasons clearly apparent, Applicant respectfully requests full allowance of claims 24-27, 31, 34-38, 40, 42, 44-45, and 54-56. The Examiner is invited to telephone the undersigned at the number listed below for prompt action in the event any issues remain.

The Director of the U.S. Patent and Trademark Office is hereby authorized to charge any fees or credit any overpayments to Deposit Account No. 50-3183 of Sprinkle IP Law Group.

Respectfully submitted,

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